assumed that Indian tribalism was incompatible with United States citizenship.

It was also conceptually troubling that Indian citizens remained wards of the federal government at least so long as their land was in trust and the allottees had not abandoned their tribal relations. In 1905, the Court had found that citizenship under the Allotment Act made the laws prohibiting liquor traffic inapplicable to sales to allotted Indians because citizen-Indians were beyond the reach of congressional power. Matter of Heff, 197 U.S. 488 (1905). But Congress's retreat from automatic citizenship in the 1906 Act and the federal government's policy of continuing to recognize the tribal relations and wardship of Indians who were granted allotments and trust patents led the Court to reconsider its decision in *Heff.* In United States v. Nice, 241 U.S. 591 (1916), the Court expressly overruled *Heff,* relying on the "familiar rule" that legislation affecting Indians, even naturalized Indians, "is to be construed in their interest and a purpose to make a radical departure is not lightly to be inferred. * * * As, therefore, these allottees remain tribal Indians and under national guardianship, the power of Congress to regulate or prohibit the sale of intoxicating liquor to them, as is done by the act of 1897, is not debatable."

In the early twentieth century the Court decided a number of other cases that in essence, simply ignored many of the earlier perceived problems about the supposed incompatibility of Indian citizenship with continued tribal relations and federal guardianship. See, e.g., Winton v. Amos, 255 U.S. 373 (1921); Tiger v. Western Inv. Co., 221 U.S. 286 (1911); United States v. Celestine, supra, 215 U.S. at 288–90. While no doubt should have lingered on the question, the 1924 Citizenship Act specified that "citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property."

4. THE GENERAL ALLOTMENT ACT

Larger national events occurring at mid-century took their inevitable toll in Indian country by the 1880s. The United States acquired the Pacific Northwest through the Treaty with Great Britain of 1846. By the Treaty of Guadalupe Hildalgo with Mexico of 1848, the United States annexed California, Nevada, Utah, most of Arizona, and large areas of New Mexico and Colorado. Gold was discovered at Sutter's Mill in California in 1848, spurring the largest human migration in history. California (1852), Oregon (1859), and Nevada (1864) achieved early statehood. The transcontinental railroad was completed in 1869. The General Homestead Act of 1862, the Desert Land Act of 1877, and other federal land disposition programs lured settlers west.

As the West began to fill up, it was no longer convenient for the federal government to keep Indian reservations separate and apart under tribal ownership. Before the 1850s, almost all Indian land had been held communally by the tribes. A few treaties had provided for the allotment of lands, i.e., the conversion of some tribal land into parcels of land held by individual tribal members. One such provision was in the 1798 Treaty with the Oneida Indian Nation. In 1853, however, Commissioner of Indian Affairs George Manypenny instituted a general policy of

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David H. Getches, Charles F. Wilkinson and Robert A. Williams, Jr., *Cases and Materials on Federal Indian Law.* 4th ed. (St. Paul West Group, 1998) 165-175

attempting to negotiate allotment provisions in treaties. Allotment became a principal device in the program to assimilate Indians at the same time as tribal lands were made available for non-Indian settlement. Indian policy thus became merged with Manifest Destiny.

The purpose of some early allotments was to reserve tracts then occupied by tribal members from the large tribal land cessions. More commonly, however, allotments were used as a means to break up tribal land holdings. Some statutes also authorized the allotment of federal lands to individual Indians. See, e.g., 25 U.S.C.A. § 334 (Indians not residing on reservations); 25 U.S.C.A. § 336 (Indians settling on public domain); 25 U.S.C.A. § 337 (Indians occupying national forests); 43 U.S.C.A. § 189 (repealed 1976) (Indians abandoning tribal relations). In addition, those Indians who were citizens were authorized to homestead unappropriated public lands in the same manner as non-Indians pursuant to 43 U.S.C.A. § 161 (repealed 1976). Finally, there were several allotment acts that applied to a single tribe. But the General Allotment Act of 1887, or Dawes Act, was the vehicle through which Congress systematically allotted lands on most Indian reservations—some 41 million acres of former tribal land were allotted. In addition to diminishing the tribal land estate, the Act opened many reservations to extensive settlement by non-Indians, and marked a major turn in Indian law and policy.

DELOS SACKET OTIS, HISTORY OF THE ALLOTMENT POLICY, HEARINGS ON H.R. 7902 BEFORE THE HOUSE COMM. ON INDIAN AFFAIRS

73d Cong., 2d Sess., pt. 9, at 428–85 (1934).

* * *

President [Cleveland] signed the Dawes Act on February 8, 1887. The chief provisions of the act were: (1) a grant of 160 acres to each family head, of 80 acres to each single person over 18 years of age and to each orphan under 18, and of 40 acres to each other single person under eighteen;* (2) a patent in fee to be issued to every allottee but to be held in trust by the Government for 25 years, during which time the land could not be alienated or encumbered; (3) a period of 4 years to be allowed the Indians in which they should make their selections after allotment should be applied to any tribe—failure of the Indians to do so should result in selection for them at the order of the Secretary of the Interior; (4) citizenship to be conferred upon allottees and upon any other Indians who had abandoned their tribes and adopted "the habits of civilized life." * * *

Aims and Motives of the Allotment Movement

That the leading proponents of allotment were inspired by the highest motives seems conclusively true. A Member of Congress, speak-

* [Ed.] There were demands for equalization and in 1891 the original Act was amended to provide for allotments of 160 acres of grazing land, or 80 acres of farming land, to each Indian. See 25 U.S.C.A. § 331.

ing on the Dawes bill in 1886 said, "It has * * * the endorsement of the Indian rights associations throughout the country, and of the best sentiment of the land." * * *

* * *

The supreme aim of the friends of the Indian was to substitute white civilization for his tribal culture, and they shrewdly sensed that the difference in the concepts of property was fundamental in the contrast between the two ways of life. That the white man's way was good and the Indian's way was bad, all agreed. So, on the one hand, allotment was counted on to break up tribal life. This blessing was dwelt upon at length. The agent for the Yankton Sioux wrote in 1877:

"As long as Indians live in villages they will retain many of their old and injurious habits. Frequent feasts, community in food, heathen ceremonies, and dances, constant visiting—these will continue as long as the people live together in close neighborhoods and villages * * * I trust that before another year is ended they will generally be located upon individual lands [or] farms. From that date will begin their real and permanent progress."

On the other hand, the allotment system was to enable the Indian to acquire the benefits of civilization. The Indian agents of the period made no effort to conceal their disgust for tribal economy. * * *

But voices of doubt were here and there raised about allotment as a wholesale civilizing program. "Barbarism" was not without its defenders. Especially were the Five Civilized Tribes held up as an example of felicity under a communal system in contrast to the deplorable condition of certain Indians upon whom allotment had been tried. A minority report of the House Committee on Indian Affairs in 1880 went so far as to state that Indians had made progress only under communism. At this point it is worth remarking that friends and enemies of allotment alike showed no clear understanding of Indian agricultural economy. Both were prone to use the word "communism" in a loose sense, in describing Indian enterprise. It was in the main an inaccurate term. Gen. O.O. Howard told the Lake Mohonk Conference in 1889 about a band of Spokane Indians who worked their lands in common in the latter part of the 1870's, but certainly in the vast majority of cases Indian economic pursuits were carried on directly with individual rewards in view. This was primarily true even of such essentially group activities as the Omahas' annual buffalo hunt. Agriculture was certainly but rarely a communal undertaking. The Pueblos, who had probably the oldest and most established agricultural economy, were individualistic in farming and pooled their efforts only in the care of the irrigation system. What the allotment debaters meant by communism was that the title to land invariably vested in the tribe and the actual holding of the land was dependent on its use and occupancy. They also meant vaguely the

cooperativeness and clannishness—the strong communal sense—of barbaric life, which allotment was calculated to disrupt.

* * *

The believers in allotment had another philanthropic aim, which was to protect the Indian in his present land holding. They were confident that if every Indian had his own strip of land, guaranteed by a patent from the Government, he would enjoy a security which no tribal possession could afford him. If the Indian's possession was further safeguarded by a restriction upon his right to sell it they believed that the system would be foolproof. * * *

* * *

It must also be noted that while the advocates of allotment were primarily and sincerely concerned with the advancement of the Indian they at the same time regarded the scheme as promoting the best interest of the whites as well. For one thing, it was fondly but erroneously hoped that setting the Indian on his own feet would relieve the Government of a great expense. * * *

* * *

It must be reported that the using of these lands which the Indians did not "need" for the advancement of civilization was a logical part of a whole and sincerely idealistic philosophy. The civilizing policy was in the long run to benefit Indian and white man alike. But doubters of the allotment system could see nothing in the policy but dire consequences for the Indian. Senator Teller in 1881 called the Coke bill "a bill to despoil the Indians of their lands and to make them vagabonds on the face of the earth." At another time he said,

"If I stand alone in the Senate, I want to put upon the record my prophecy in this matter, that when 30 or 40 years shall have passed and these Indians shall have parted with their title, they will curse the hand that was raised professedly in their defense to secure this kind of legislation and if the people who are clamoring for it understood Indian character, and Indian laws, and Indian morals, and Indian religion, they would not be here clamoring for this at all."

* * *

* * * Senator Teller had charged that allotment was in the interests of the land-grabbing speculators, but the minority report of the House Indian Affairs Committee in 1880 had gone even further in its accusations. It said:

"The real aim of this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indian are but the pretext to get at his lands and occupy them * * *. If this were done in the name of greed, it would be bad enough; but to do it in the name of humanity, and under the cloak of an ardent desire to

promote the Indian's welfare by making him like ourselves whether he will or not, is infinitely worse."

* * *

It is probably true that the most powerful force motivating the allotment policy was the pressure of the land-hungry western settlers. * * *

* * *

There were many expressions of Indian opposition to allotment in the early 1880's. * * * The Senecas and the Creeks made bold to memorialize Congress against disrupting with allotment their systems of common holding. * * *

Certain tribes had specific objections to allotment. A memorial from the Creeks, Choctaws, and Cherokees in 1881 read: "The change to an individual title would throw the whole of our domain in a few years into the hands of a few persons." * * *

What can be said * * * is that there was no apparent widespread demand from the Indians for allotment.

The Application of Allotment

The application of allotment to the reservations was above all characterized by extreme haste.

* * *

[In addition to the General Allotment Act, Congress also passed special legislation dealing with individual tribes.] In 1888 Congress had ratified five agreements with different Indian tribes providing for allotment and for the sale of surplus lands. The following year Congress passed eight such laws. A member of the Board of Indian Commissioners in 1891 estimated that the 104,314,349 acres of Indian reservations in 1889 had been reduced by 12,000,000 acres in 1890 and by 8,000,000 acres in the first 9 months of 1891. * * *

* * *

In the years prior to 1887 the Government had approved 7,463 allotments with a total acreage of 584,423; from 1887 through 1900 it approved a total of 53,168 [pursuant to the General Allotment Act] with an acreage of nearly 5,000,000. * * *

* * *

Administration and Changes in Policy: Leasing

* * *

Those who were dissatisfied with the results achieved by the Dawes Act saw various causes of failure. For one thing, the whole emphasis of the allotment policy was laid upon farming, and critics from time to time

pointed out that large sections of the Indians' lands were not suitable for agriculture. * * *

* * *

It was not true that the Government made no efforts whatever to equip the Indians for farming. But it made very slight efforts. The appropriation act passed in 1888 provided for the allocation of $30,000 to the purchase of seed, farming implements, and other things "necessary for the commencement of farming". In 1888 alone 3,568 allotments had been made. The appropriation, therefore, granted less than $10 to every new allottee setting out on his farming career. There is, furthermore, no way of knowing how much of this money was expended for this purpose. * * *

The following year the same amount was provided but in 1890 no such appropriation was made. In 1891 Congress raised $15,000 for the purpose and this sum was continued through the next 2 years. After 1893 the appropriation acts up to 1900 included no such items. * * *

* * *

Defects in the system which * * * occupied the attention of the friends of the Indian were those resulting from the fact that allotted lands must be free from State taxation. The Dawes Act, providing for the 25–year Federal trust period during which time the land might not be encumbered, meant, it was clear, that no State could tax the allottee's holdings. As a result, the friends of the Indian were noting in 1889, States were refusing to assume any responsibilities for Indian communities and were withholding such services as the up-keep of schools and roads. It was also apparent that this situation was a source of great hostility to Indians on the part of white neighbors. * * *

The decision to allow the Indian to lease his land was fraught with grave consequences for the whole allotment system. Probably it was the most important decision as to Indian policy that was made after the passage of the Dawes Act. * * *

* * *

Results of Allotment to 1900

Analysis of the achievements of the allotment system requires first some appraisal of the leasing practice which vitally affected allotment results. There were defenders of the leasing system all through the 1890's. It had certain immediate consequences which recommended it to friends of the Indian who were sincere if lacking in vision. There was the simple fact of allotted lands lying idle which the Indians either could not or would not cultivate. Such waste seemed wicked to a generation that was coming increasingly to set store by efficiency. How much better it was for the lands to be used and the Indians to be deriving an income from them. * * *